



## CONSULTING ASSISTANCE ON ECONOMIC REFORM II

# DISCUSSION PAPERS

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### Insurance Law in Madagascar

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# **INSURANCE LAW IN MADAGASCAR**

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## **INSURANCE LAW IN MADAGASCAR**

In modern economies insurers have two main economic functions:

1. They protect investors against losses caused by accidental events; most investments would never occur if they could not be protected by insurance.
2. They act as investors themselves, thanks to the technical reserves they accumulate in the normal course of their business.

Insurers also have a fundamental social function as they protect families against the accidental loss of their income or wealth. The security and peace of mind given by insurance to consumers and workers is also a factor in economic growth.

Political, historical, cultural and even religious circumstances explain why insurance is more developed in certain countries than in others. But, by and large, the percentage of insurance premiums in relation to the Gross Domestic Product of a country can be used as a good measure of the development of an economy. Using that yardstick confirms that Madagascar is, indeed, one of the poorest countries in the world as all other available statistics confirm.

Insurance represents 12.78 % of the GDP in Japan, 10.45 % in Switzerland, 10.33 % in the United Kingdom, and 8.60 % in the United States. In Madagascar this rate was 0.58 % in 1994, and around 0.54 % in 1995, with an average premium per capita of little more than one U.S. dollar. These figures are considerably lower than those encountered in most African or Asian countries even among the least developed.

The insurance market is thus notoriously small in Madagascar. A brief description of the market is necessary to understand the reasons for such a situation, before we analyse how reform of the insurance laws could help improve it, with resultant favorable social and economic consequences.

### ***A. The Insurance Sector in Madagascar***

#### **1. Before 1975**

The insurance market in Madagascar is almost a century old as the French Company, l'Union (now part of the AXA Group) established its first agency in the island in Antsiranana (then Diego Suarez) in 1898. In 1960, the year Madagascar recovered its sovereignty, 42 insurance companies were operating in the country: 25 French, 14 from the United Kingdom, 1 Moroccan, 1 Italian, and 1 American. Some of these foreign insurers later withdrew from the Malagasy market because their local premium income was too small.

During the First Republic, the first local companies, incorporated under Malagasy law and with head offices located in Antananarivo, were licensed, as noted below.

<b>Date Established</b>	<b>Company</b>
1967	Mutuelle Assurance Malagasy (M.A.MA.)
1968	Ny Havana.
1973	Mutuelle Accidents Scolaires de Madagascar (M.A.S.M.), renamed PASCOMA in 1978.
1974	La Préservatrice Madagascar, renamed Assurances et Réassurances Omnibranches (ARO) in 1975

M.A.MA. is a mutual insurance company founded and managed by the freight and passengers road transport operators. M.A.S.M. specialises in the protection of schoolchildren during their school activities and is the responsibility of the Ministry of Education. Ny Havana and ARO are stock companies, the majority ownership of which belonged, up to the nationalization of 1975, to the French insurance company La Préservatrice (now part of Athena Group recently taken over by A.G.F.). In addition, Ny Havana manages a small mutual insurance company, AVOTRA, which is now virtually without any activity.

In 1975, therefore, there were five companies incorporated in the country (three mutual and two foreign-owned stock companies) and eleven General Agents who represented foreign insurance companies, mainly French and British.

## **2. After 1975**

Ordonnance n° 75-002 of 16 June 1975, which nationalized the insurance companies, completely changed the situation.

*Article 1* stated that all insurance activities in the country were henceforth part of a state monopoly.

*Article 2* suspended the licenses of all foreign insurance companies and organised the immediate transfer of their portfolios of contracts to either ARO or Ny Havana, the only two locally incorporated stock companies. In practise, the agents who represented the foreign companies in the country became, and still are, agents of ARO or Ny Havana. The foreign companies, however, kept their assets and liabilities as they existed prior to the state takeover, and their former agents continued to collect their premiums in arrears, paying outstanding claims, and managing their investments. Twenty-two years later, almost all claims incurred prior to 1976 have been settled, but many of the nationalized foreign insurers still own bank accounts and property in Madagascar as they have been forbidden from transferring their

net assets abroad. No compensation was paid to the companies for the loss of their local business in Madagascar.

*Article 3* stated that all shares in stock insurance companies incorporated in Madagascar belonging to foreign individuals or foreign companies were henceforth property of the state. Stocks belonging to shareholders of Malagasy nationality were not taken over by the state, which means that ARO and Ny Havana have never been completely nationalized and still keep a small minority of private shareholders. La Préservatrice, the former majority shareholder, later negotiated a token indemnity for the forced transfer of its stocks.

*Article 4* stated that insurance companies incorporated in Madagascar were to keep writing and managing their business in compliance with the laws regulating commercial companies.

### 3. Current Operators

The market operators have not changed since 1975. They are:

**ARO** and **Ny Havana**, two stock companies belonging in the majority to the state, licensed to provide all classes of insurance, both Life and Non-Life, active in the main cities of the country through branches or agencies;

**AVOTRA**, a very small mutual company, managed by Ny Havana, and writing automobile insurance;

**M.A.MA.**, the motor mutual company, which writes only compulsory Third Party Liability Covers and claims to have a market share of over 50 % of that class of insurance;

**PASCOMA**, the mutual company limited to school risks and managed by the Ministry of Education.

As M.A.MA. has not published its accounts for years and is not a member of C.S.A. (Comité des Sociétés d'Assurances), the professional body which represents the insurance companies, no complete report on the market is available in the Ministry of Finance, the supervisory authority, or in the C.S.A. Due to special circumstances, Ny Havana had not published its accounts for 1996 at the time of my departure from the country.

From data given by the companies, the premium volume can be estimated as follows (local direct business gross of outwards reinsurance but net of inwards reinsurance), in millions of Malagasy francs:

	<b>1994</b>	<b>1995</b>	<b>1996</b>
ARO	32,253	45,478	46,990
Ny Havana	20,318	29,355	35,000 <sup>(1)</sup>
M.A.MA	<u>4,000</u> <sup>(1)</sup>	<u>5,000</u> <sup>(1)</sup>	<u>7,000</u> <sup>(1)</sup>
<b>TOTAL</b>	<b>56,571</b>	<b>79,833</b>	<b>88,990</b>

(1) estimated figure in the absence of published annual report.

The premium volume is not only very small but also diminishing in real value. The nominal values increase over the years, but at a rate inferior to inflation:

	Rate of increase	Inflation
1995 over 1994	41.12 %	49 %
1996 over 1995	11.47 %	20 %

The monopoly of the state over all insurance activities, which was the objective of the Act of 16 June 1975, is thus almost complete with the following exceptions:

1. Some private minority shareholders still have a share of ARO's and Ny Havana's capital.
2. Private insurance agents still act as intermediaries between the two main insurers and their clients. The eleven General Agents who were acting for foreign insurers before 1975 have lost some of their former market share but are still in operation as General Agents of ARO or Ny Havana. New agencies have been set up by the two companies to help sell insurance products to new sectors of the population or new regions of the country.
3. M.A.MA. is managed quite independently from the state and offers real competition to the state-owned companies. The Ministry of Finance has limited M.A.MA.'s choice for its reinsurance program, ordering it to reinsure its risks with ARO, and has refused to extend its license to classes of insurance other than motor, despite the mutual's application for such an extension. Despite those constraints, M.A.MA. applies its own rates and conditions and selects its board members and managers.
4. The reinsurance programs of both ARO and Ny Havana follow government instructions to a certain extent. ARO and Ny Havana have established complex measures in order to reinsure one another to reduce the volume of premiums ceded abroad in foreign currencies. ARO has been ordered to reinsure M.A.MA. while Ny Havana reinsures AVOTRA. Madagascar has signed the international treaty which gave birth to Africa Re (African Reinsurance Corporation) and respects the compulsory cessions implied. But above the first level of reinsurance protection which involves the capacity available in the country, reinsurance programs have, by and large, been relatively freely negotiated with professional reinsurers and have used all the resources of the international market.

#### **4. Strengths of the Malagasy Insurance Market**

**A.** Although small in volume, *the insurance market has the capacity to respond to the needs of its clients*, both technically through the variety of its products, and financially through the strength of the balance sheets of the two main operators and through their reinsurance programs. The covers that can be found in more mature insurance markets are available in Madagascar from ARO or Ny Havana, whose managers and underwriters have the level of professionalism required to write almost all classes

of insurance expected in a modern economy, for private individuals as well as for commercial or industrial businesses. La Préservatrice, original founder of both companies, had recruited and trained a competent staff who remained in office after nationalization (with the exception of French expatriates, who left the country). Members of the Board and the General Manager have been nominated by the Government since 1975, when the state became the majority shareholder. But the appointments have been shrewd and decided on competence and merit rather than mere political cronyism, as has been observed elsewhere in similar circumstances. Indeed, such was the reputation of excellence of the insurance companies' management that several of its members have been appointed to ministerial posts in the government. The current Prime Minister, Mr. Pascal Rakotomavo, was a long-time general manager of ARO. The upper levels of the state are familiar with the insurance industry. This helps explain why the managers of the state-owned stock insurance companies have been carefully selected and checked.

**B.** ARO, Ny Havana and M.A.MA. have built a network of branches (called Directions Regionales) and, in the case of the two stock companies, agencies, thanks to which ***insurance products are available in most parts of the country***. Only small rural communities are not fully served by the companies.

**C.** On most technical matters, including rates and insurance conditions, ***the government supervisory authority has left the two major companies free to make their own decisions***. Most are taken jointly through the C.S.A. (Comité des Sociétés d'Assurances). For large industrial risks, however, rates and/or conditions can differ from one company to another as they take advice from different sets of reinsurers or even try to place exceptional risks in the international reinsurance market at the best possible terms.

Government really interferes only in the motor tariff, which is a political issue. It always takes the advice of C.S.A., which keeps up-to-date statistics on motor business, before enforcing a negotiated decision. Government also limits competition by enacting maximum rates for agents' commissions. But this is a step welcomed by all the profession including agents, who do not suffer under the current rates.

Companies have also been free of government interference in the choice of their investments. The calculation of technical reserves has always been made on a professional basis, and the counterpart assets have been invested in the way which offered the best probability of returns in the view of the management, given the very limited opportunities existing in the country.

In many Third World countries, state insurance monopolies, or even private companies, have been ordered by the government to come to its financial rescue, through compulsory loans never to be repaid or plain pilfering, or, more subtly, through irresistible invitations to subscribe to the capital of doomed state companies. This has not occurred in Madagascar, despite the repeated difficulties encountered by the state budget.

Thanks to the wisdom of the state and the prudence of company managers, ARO and Ny Havana (the former more than the latter) have accumulated strong reserves and assets. ARO is probably



overreserved. Its technical reserves at the end of 1996 totaled 171,700 million Malagasy francs, compared to a gross premium income of 50,525 million. Ny Havana is suspected to have some deficiencies in its motor claims reserves. Nevertheless, its technical reserves at 31.12.1995 amounted to 68,023 million Malagasy francs, more than twice its annual gross premium income of 33,081 million. Both companies have large investments in real estate and property which are still valued on their balance sheets at historical costs. After years of severe inflation those costs are only a fraction of current market values. Buildings which were bought 20 or more years ago have been completely written off although they have a good market value thanks to their location and rent revenues.

The state has not only refrained from interfering with the investments of insurance companies, it has helped them build their capital through the very favourable and peculiar mechanism of the "guarantee reserve" (*réserve de garantie*). The Arrêtés 5157 and 5158 of December 24, 1968 and the Arrêté n° 4895 of January 1, 1982 authorized insurance companies to transfer directly part of the premium paid by the insured to a capital account without its appearing in a revenue account, thus avoiding all normal reinsurance and tax expenses. The percentage of the premium directly transferred to capital as a *reserve de garantie* is 15.45 % for life business, and 15.95 % for non-life business since 1982.

The mechanism of *réserve de garantie* is complex and is justified by the exposure of Malagasy insurers to frequent natural catastrophes such as hurricanes or droughts, and by the mutual reinsurance contracted by ARO and Ny Havana before they can count on international reinsurers. But the main effect of this accounting mechanism is to increase the reserves of the insurance companies, and consequently their capital, even though they might suffer a net loss in their annual revenue account. If they do show a bottom-line profit, they can pay a dividend equal to that profit while at the same time increasing their capital through the incorporation of parts of the "guarantee reserve". The result of this peculiar and dishonest (to the insured, the reinsurers and taxmen) mechanism is that both ARO and Ny Havana have managed to build strong balance sheets and their investment income generally allows them to show a net profit despite their underwriting losses.

In 1996, ARO's investment results amounted to 32,392 million Malagasy francs, almost equal to premiums net of reinsurance ceded (34,526 million), considerably higher than the net profit of 4,833 million. The situation was less spectacular at Ny Havana, although in 1995 the investment results amounted to 7,069 million Malagasy francs, compared to a final net result of 833 million. Net assets of ARO at 31.12.96 have been built up to 53,975 million Malagasy francs, more than annual gross premiums written. Ny Havana's net assets at 31.12.95 were 29,660 million, almost 90 % of annual gross premiums.

**D. Being (relatively) rich, at least in comparison to the level of their premium income, *insurance companies have played a significant role in financing state monetary needs and in providing investment funds to the productive sector.*** ARO and Ny Havana are regular buyers of treasury bonds and other state loans. At the same time they are an important provider of capital to private or state-owned companies. ARO founded and is the main shareholder, with a 49% equity shareholding, of the main venture capital fund in the country, FIARO.

	<b>ARO</b> (12/31/96)	<b>Ny Havana</b> (12/31/95)
Treasury bonds and other state loans	87,878	39,714
Participation in companies' capital	9,246	1,447
Banks and cash	80,771	11,982

ARO and Ny Havana assume the main economic functions of insurers: they insure investments against accidental loss, and they contribute to the financing of the economy.

## 5. Weaknesses of the Insurance Sector

The flaws of the insurance market in Madagascar are serious. Some are the consequence of circumstances beyond the control of insurers, but others follow from the lack of competition which results from the state monopoly over all insurance activities.

**A.** The most severe hindrance to the development of insurance lies in the absurdly *high level of taxes collected by the state on insurance premiums*. These are subject to two levies: the Value Added Tax (VAT), at the rate of 25%, and the registration tax (*taxe d'enregistrement*), at rates which differ according to insurance class. The combined levies amount to 50 on fire and 30.6% on motor and casualty insurance. Cargo marine insurance is exempt from taxes, and group life insurance taxes are limited to 3%. But these exemptions do not benefit inland cargo business, and individual life insurance is burdened by VAT and registration taxes as well as the guarantee reserve surcharges, making life products hopelessly costly for the clients.

The cost of taxes, added to the absence of innovative products as discussed below, is the main reason a large part of commercial risks are not insured in-country. Some of these risks are insured with foreign insurers, in contradiction to the law, at costs much lower than those which would be paid in Madagascar. Other risks are not insured at all, or are deliberately underinsured, because business owners find it more profitable to build their own reserves to protect against risks, even if such costs are not deductible from the tax on profits (*Impôt sur les Bénéfices des Sociétés*), which is smaller than the tax on fire insurance premiums. The taxes levied on premiums make insurance contracts even more of a luxury product for private individuals and families.

Government should encourage the buying of insurance protection by both individuals and businesses. The level of taxes levied on premiums has the contrary effect. In particular, Madagascar seems to be the only country where VAT is collected on insurance premiums. All insurance activities should be exempted from VAT, as is the case in other countries.

**B.** The overall state of *poverty of the country is also an obvious hindrance to insurance activities*. GDP per capita was only US\$244 in 1996, half what it was in 1973. It is understandable

that under such conditions most families have little to insure and that premiums, however low, are always too expensive for them to pay. The only class of insurance with a significant number of private clients is Third Party Motor Liability which is legally compulsory. Research conducted by the banking sector concluded that no more than two or three hundred families in the whole country are wealthy enough to be able to afford life insurance. As previously mentioned, the level of taxes on insurance premiums is a further deterrent to potential buyers.

Apart from motor, other classes of insurance are bought almost exclusively by commercial or industrial clients. Unfortunately the rate of investment is low and does not increase so that there appears very little new insurable risk. Only rapid and regular growth of the economy, resulting in new investment and rising individual incomes, can enhance the insurance sector.

**C. The *high rate of inflation*** in recent years has also been counterproductive for insurance. Life products currently sold in Madagascar are not modern enough to offer good protection against the monetary erosion of insured capital. Their real rate of return to the policyholder is clearly negative. In Non-Life classes it is not easy to convince insurance buyers to declare the real value of their assets taking into account the effects of inflation. Too often policyholders keep insuring property or equipment at historical or purchase cost, much lower than market or replacement cost.

The rate of inflation is currently being reduced in Madagascar. It is expected to be limited to 7% in 1997, as opposed to 20% in 1996. If the stabilization of the currency can be sustained for some years, this can only have a positive effect on insurance activity and on the confidence of the public in insurance products.

**D. The *lack of real competition in the market*** is obviously another hindrance to its growth. Insurance brokers have not been allowed in the country since the nationalization of 1975, even though they could have introduced innovative products or cheaper and more efficient mechanisms to manage certain classes of risks. The two state-owned companies claim that they do all that is necessary to adapt their products to the needs of their clients. The main General Agents and those businessmen most aware of the rapid changes in other insurance markets, however, complain of their lack of innovation and flexibility, of very slow claims handling and payment procedures, and of too high administrative costs that contribute to high premiums.

Rates and conditions of insurance are decided by C.S.A. (*Comité des Sociétés d'Assurances*), which in fact means a joint decision by ARO and Ny Havana. General Agents are members of C.S.A., but they claim that their views are ignored and that the real power of decision making lies with the two insurance companies, which impose their decisions on the market with no real bargaining power left either to intermediaries or to the insured.

Staff members of the companies appear not to be ashamed of the very slow handling of claims. They find nothing objectionable in the fact that more than 90% of bodily injuries are settled after years of legal battles rather than transacted on an amicable basis. Companies confess that motor bodily injury claims

can take as long as ten years before victims are actually paid. ARO and Ny Havana point out that their only competitor in the motor business, M.A.MA., takes even longer to pay its claims.

Administrative and commercial costs which burden premiums are kept at a high level in part because of the lack of competition. Such costs represented 35% of premiums at ARO in 1996, and 37% at Ny Havana in 1995. Efficient property casualty insurers in other markets keep those costs at around 20% and efficient life insurers in modern developed markets keep them as low as 3 to 5%.

A study of the insurance sector in Madagascar in 1990, made by SOATEG for the World Bank, revealed that 61% of clients were not satisfied by the way their insurance needs were treated; 72% judged that claims payments were "not normal"; and 88% that the process of handling claims was too long. From my own observations the image of the insurance industry has not improved since 1990.

**E.** The two stock companies have registered net profits since the state took them over in 1975 and declared dividends more regularly than most other state-owned companies. But these results have been obtained despite heavy technical losses and thanks to a very unusual level of investment profits. The latter have been enhanced by the abnormally slow rate of claims payments which strengthens the technical reserves, and by the questionable accounting methods used to increase funds through the "guarantee reserve". ***The companies have consistently shown large technical losses, their net premiums regularly being lower than costs and claims incurred.***

Technical losses are most blatant in the motor class of business which is the larger part of the market. The gross loss ratio of ARO was 106.20% in 1995 and 102.38% in 1996. The combined ratio was 139.57% in 1995 and 139.75% in 1996. In 1995, for Ny Havana the ratios were: loss ratio 77.55%, combined ratio 118.04%. For ARO, the loss ratio in the motor business was 172.26% in 1995 and 149.77% in 1996. Other heavy technical losses were registered in other classes: Life, Marine, Third Party Liability, and Miscellaneous Risks.

The very high loss and combined ratios of the companies have been, up to now, offset by exceptionally high rates of return on investment. But this situation is not sound and not sustainable forever. An insurance company should make profits on its own business, i.e. collect more premiums than it has to pay in claims and costs.

The delicate financial situation of Malagasy insurance companies was confirmed in 1997, when interest rates rapidly fell following the reduction in inflation. Treasury bonds only pay from 4.61% to 9.90% annually, depending on their duration, and banks offer 7% on term deposits. Insurers expect their investment income to be much lower in 1997 than in previous years and wonder whether it will be enough to balance the technical loss which is expected to be as high as before. Indeed, the 1996 results of Ny Havana expected in December 1997 confirm how fragile the balance sheet of a company can be. Because of heavy court damages after industrial disputes, but also because it appeared necessary to new management to increase outstanding reserves, it was expected that the loss sustained in 1996 would be larger than the total share capital of the company.

In the case of the motor mutual company M.A.MA., the situation is even more worrisome. No accounts have been produced by management for years because it just does not know the true extent of the company's liabilities and claims outstanding. They refuse to pay claims to victims who are not clients of the mutual and even refuse to pay damages decided by the Courts of Appeal; and they pay their own clients only when they have collected enough premiums and, even so, after a large discount on the amount due.

**F.** The above-mentioned situations occurred because of *a complete lack of supervision by government authorities* over the activities of insurance companies. The law clearly gives the Ministry of Finance all the powers necessary to supervise insurance companies, to check whether they act according to all legal requirements and whether their assets are sufficient to guarantee payment of all their contractual liabilities.

But, in practice, the legal power of the Ministry is not enforced. Within the Treasury Department (Direction du Trésor) of the Ministry, the Financial Entities *Department (Service des Institutions Financières, S.I.F.)* is in charge of preparing new legislation and administrative decisions for financial entities such as banks, savings and loan cooperatives, investment managers and insurance companies. S.I.F. does not have the power to supervise banks which is the responsibility of a commission within the Central Bank. It has the legal power to supervise insurance companies, but its staff does not have the competence, training, or political clout to use such power. The last annual report published by the S.I.F. on the Malagasy insurance market dates from 1983.

It has been rumored for years that Ny Havana has insufficient reserves against outstanding claims. But no one in the Ministry has ever checked how Ny Havana calculates its reserves and if prior years' statistics confirm the rumored deficiency. Such a deficiency could jeopardize the security of contracts sold by the company. Objections should have been made to the questionable profit shown in 1995, when accounts related to the widely publicised industrial dispute between the company and 80 dismissed staff members were closed with no reserves.

Of course, the most obvious illustration of the lack of intervention on the part of the supervisory authority is the case of M.A.MA. The Mutual was organised in 1967 to help solve a real problem of that time: most licensed insurers were not willing to insure taxis, intercity passenger minibuses and the like. M.A.MA. benefited from the technical assistance of a reputable French group of mutual insurance and reinsurance companies known as Groupe Monceau, which had set up several similar insurance mutuels in other African countries. But technical and commercial links with Groupe Monceau have been progressively severed especially after the state ordered M.A.MA. to cancel its reinsurance treaty with Mutuelle Centrale de Réassurance and other international reinsurers and to reinsure its entire portfolio with ARO. Today M.A.MA. seems to be managed in the way a small illiterate shopkeeper runs his business -- with accounts limited to premiums collected on the one hand and expenses paid on a day-to-day basis (wages, rents, sometimes claims) on the other; and no apparent attempt is made to establish a yearly balance sheet or a permanent inventory of claims outstanding.

For many years the authorities shut their eyes with the probable complicity of the state-owned companies because M.A.MA. had only a marginal share of the market and specialised in classes of vehicles which were considered undesirable risks. Now, however, M.A.MA. is undercutting the rates offered by the two companies party to the C.S.A. tariff agreement, and offers services welcomed by the public, such as the delivery of weekly, or even daily insurance covers. These enable car owners who cannot afford to pay for a one-year policy to show the traffic police that they own an insurance certificate. M.A.MA. does not limit its operations to the professions who originally founded the Mutual, i.e. road transporters, but insures any car owner. M.A.MA.'s managers claim, indeed, that they now insure about half the 106,251 vehicles registered in Madagascar (December 1996).

People who insure with M.A.MA. primarily want to buy a certificate to comply with the law requiring Motor Third Party Liability, and want to buy it as cheaply as possible. They do not really care for servicing and future claims handling and payment. In that sense it can be said that M.A.MA. offers a service to the public and that if it did not exist more cars, buses, and trucks would travel with no insurance at all. The obvious problem is that when a victim has the misfortune to be involved in an accident where the liability lies with a car owner insured by M.A.MA., there is very little probability of ever getting indemnified. With the rapid increase in the number of clients of M.A.MA., the number of accident victims who do not get compensation is also increasing. This has a deplorable effect on the overall image of insurance in the country and makes the proclaimed legal compulsory insurance appear to be a farce.

The situation has grown to such proportions that rumors have spread as to the Mafia-like methods in use in the management of M.A.MA. The fact is that on February 5, 1997, the chairman of the Mutual, Mr. Rakotoarivony Andriamaromananary, was murdered and his private files searched for allegedly suspicious documents. The murderers have apparently not been found.

Officials at the Ministry of Finance, when asked about M.A.MA., claim that they are helpless and that any interference on their part would create social or political upheaval because of the economic power of the road transport sector and its vital importance for the economy and the daily necessities of almost all people living in the country. It is true that some years ago the Minister of Finance did nominate a legal administrator to replace the management and board of directors, who had not produced any accounts nor responded to orders from the supervisory authority. Unfortunately, the administrator's mission largely failed, and M.A.MA. is still growing in defiance of the law and the authorities. One notes that fear of retaliation from the road transport sector has not prevented other governments from canceling the licenses of similar mutuels, such as Mutuelle des Taxis d'Abidjan, Côte d'Ivoire, and Mutuelle d'Assurances des Transporteurs in Senegal, with no consequences other than the restoration of the rule of law and of the public perception of the insurance industry.

**G.** Although the three main insurers have made it a point to service clients in most areas of the country, there are still some *weak points in their network, especially in rural areas*.

In 1996, 77.6% of the population lived in rural communities, and 85% of the workforce was employed in agriculture. Despite the importance of agriculture to the Malagasy economy and society, insurance

companies have failed to develop products and marketing processes adapted to the needs of farmers and other residents of rural areas. In the early 1980s both ARO and Ny Havana tried to sell crop and livestock insurance to farmers but rapidly withdrew after having sustained heavy losses. Since then no specific form of insurance is available for farmers, however great the social and economic benefits of such products would be for a category which is still the vast majority of the population. The French farmers' mutual group, Groupama, is considering the viability of a small network of local insurance mutuals which would be managed by the farmers themselves in liaison with an existing network of small credit cooperatives. The creation of these farmers' mutuals cannot be authorized as long as the state keeps its legal monopoly over insurance activities.

Other areas where the lack of expertise and of innovative spirit from the existing insurers, consequences of the state monopoly, hinder the offer of modern insurance products are Life, Credit, Assistance and Travel, and Surety. The main flaw of the insurance market is its failure to develop modern and cost-efficient Life Covers. Existing products are costly, heavily burdened by taxes, levies, administrative costs, and commissions and do not guarantee the policyholders their share of investment income received by the insurer from the investment of premiums and reserves. Life premiums only amounted to 5.94% of total premium income of ARO in 1996, and 9.78% of Ny Havana's. New competition would be especially welcome in life insurance which is of particular importance to workers, families, and individuals, and at the same time benefits the local economy through the investment of long-term reserves. The low level of income of the vast majority of the population does not favour the development of life insurance, but the poor quality of the products offered to the public is certainly another hindrance to this class which is the most dynamic and fastest growing in most insurance markets the world over.

**H.** It should be stressed how the *very peculiar accounting methods* in use in Madagascar with regards to "guarantee reserve" and "special guarantee reserve" distort the real statistical results of the insurance industry. As part of every premium is directly registered in a capital account, without appearing in a revenue account, premium figures are understated. Losses are compared to premiums actually lower than what the insured have paid. Loss ratios are distorted. Reinsurers do not get their fair share of the direct premium paid by the client. The final result is diminished by the amount transferred to "guarantee reserves" which does not appear in the year's receipts. Consequently the tax on companies' profits (*Impôts sur les Bénéfices des Sociétés*, I.B.S.) is also artificially reduced. Because of this mechanism insurance managers know that they can still make money while registering underwriting losses. This is not sound and induces laxness in underwriting standards.

Protecting insurance companies, and therefore their clients, against claims of a catastrophic nature and enhancing mutual reinsurance exchanges between local insurers so as to reduce the cost of foreign reinsurance are both laudable objectives. They are the reasons given to explain the enactment of "guarantee reserves". But similar results could be achieved through orthodox accounting methods without the distortions described above.

- A compulsory "equalization reserve" could be created, on the same footing as other technical reserves, to progressively build protection against exceptional catastrophe claims.

- Local capacity of all licensed insurers can be used before resorting to outside reinsurance, through the normal mechanisms of co-insurance and reinsurance treaties.

I. A final weakness of the Malagasy insurance market lies in the *unbalanced profile of the risks underwritten* by the insurance companies. Their portfolio is mostly made up of industrial risks, some of them very large. Air Madagascar's aviation fleet represents almost 12% of Madagascar's overall insurance market. The position of lead insurer shifts between ARO and Ny Havana on the policy's renewal date, thus explaining the erratic rates of premium growth of the two companies. The company chosen as lead by Air Madagascar in any given year shows a larger increase in gross premium volume than the other.

With the exception of motor insurance, and this class is the one which shows the worst underwriting results, very little business is written in private lines, as noted earlier. This situation has two damaging consequences. First, no balance can be achieved between the normally cyclical and erratic results of industrial risks and the more stable, or at least more manageable, results of small individual risks. Second, a large part of gross premiums collected in the country has to be ceded to foreign reinsurers, because most risks are too big in insured value to be entirely retained in the country, even through the combined capacity of all country's insurers.

Only a rapid increase in income per capita, combined with a reduction in insurance costs, can ameliorate the current situation of the market and increase the percentage of private contracts over industrial risks.

## **B. Insurance Law**

Annex 1 lists the most important legal texts currently in force in Madagascar. The origin of those texts is varied, which affects their consistency. The law on insurance contracts is still the old French Law of 13 July 1930. This law is not in force any more in France, since French law has been thoroughly modernized and amended to conform to European Directives on Insurance Activities.

The law on insurance companies and supervisory authorities is Ordonnance n° 62-034 of 19 September 1962, completed by Decree n° 63-526 of 5 September 1963. These were inspired by the then Insurance Department of the French Ministry of Finance. The texts are similar to those laws which were enacted in almost all former French colonies that gained independence in the 1960s. They have been amended by Decrees 66-345 of 9 August 1966, and n° 72-090 of 11 April 1972.

The rules concerning the investment of technical reserves are detailed in Decrees n° 63-527 of 5 September 1963, n° 66-050 of 26 January 1966, n° 69-189 of 27 May 1969, n° 73-073 of 30 March 1973 and n° 82-447 of 9 December 1982.

Ordonnance n° 75-002 of 16 June 1975 gave to the state the monopoly over all insurance activities.



Motor Third Party liability insurance was made compulsory by Ordonnance n° 60-162 of 3 October 1960, completed by Decree n° 63-031 of 16 January 1963.

The current body of legislation has the great merit to exist and to serve as the legal background to the insurance market as described above, with all its strengths and flaws. When they were enacted, all the laws still in force helped to solve problems which had to be faced in those times.

But as time has passed, the deficiencies of the legislation became evident.

1. The monopoly given to the state over insurance activities in 1975 is one of the reasons for the shrinking of the insurance market observed in the country because of the lack of competition and innovation that is its inevitable consequence.
2. Some aspects of the law are outdated. For example, the list of investments admitted as representative of technical reserves dates from a time when the civil servants in charge of the state supervisory authority were confident in the security of loans to the state and of the value of buildings and property. Experience has shown that states can default on payments and that property values can severely depreciate, not to mention the negative real returns that property investment can produce when all costs and expenses are properly accounted for.

The law on insurance contracts dates from 1930, a time when legislators were eager to protect the security of insurers. Such protection extended to the point of permitting them to limit their covers to an extent which appears today largely inconsistent with the security of the policyholder and of third parties, in the case of liability insurance. In most countries legislators and judges have made the laws much more favourable to the policyholders with regard to the prohibition of exclusions, the rights of cancellation by the insurer, the period of the cover, and so forth.

Another example of the way the current legislation of insurance is outdated and unfavourable to policyholders can be found in life insurance. Modern laws, for the protection of the insured:

- make compulsory the distribution of the returns obtained by insurers from the investment of technical reserves to the insured;
- prohibit the cancellation by the insurance company of the cover of a group insurance contract as regards any individual member of the group because of illness, previous losses, or upon retirement;
- order insurers and intermediaries alike to reveal clearly the level of costs and commissions which apply to any particular life insurance contract;
- give the insured the right to change his mind and nullify his contract for some time after his signature; and so forth.

Such advances in the protection of policyholders are not in force in Madagascar, where, generally speaking, life insurance is largely neglected by current legislation. The number of victims of road

accidents who are never compensated for their damages because of legally authorized exclusions in the insurance contract should lead to changes in the law as later explained in more detail.

3. Another difficulty presented by the current legislation lies in the fact that it is rather difficult to find the texts in force. The successive laws, decrees, and executive orders (Arrêtés) have been published in old government periodicals (Journal Officiel), most of them out of print and not easy to locate. The Financial Entities Department (S.I.F.) at the Ministry of Finance has gathered a collection of laws relating to insurance, typed with some errors. This collection is very useful but is not easily available to the public, lawyers, courts, or even to members of the insurance profession.

The oldest laws have been amended several times since their first publication, adding to the uncertainty of the legal environment because no one is sure that a text produced on any given matter is still fully in force or if it was later amended.

For the sake of public knowledge and security, a codification of all laws relating to insurance is needed. USAID is currently offering computers and office equipment to government offices, which will greatly help in storing and updating legal texts. This will facilitate the work of government officials but will not be of much help to the public at large, insurers, or the legal profession.

4. All the persons consulted during the mission are in favour of a complete revamping of Malagasy insurance laws. Government officials, judges, lawyers, insurance managers, insurance agents, and businessmen are all aware that many aspects of the current laws are outdated and that a liberalization of the market would enhance competition and be favourable to policyholders. Besides being pressed to liberalize and modernize insurance legislation by World Bank and I.M.F. policies, the government independently agrees that something has to be done about the current state of the law. As early as 1990, experts from the French insurance supervisory authority had worked on updating Malagasy insurance laws. Proposed amendments to existing laws had been prepared. But the attempt ended during the long political upheaval of 1991 followed by the change of constitution and political personnel.

Today the need for changing the laws appears all the more obvious. Since February 1997, a workforce of civil servants and delegates of the insurance companies gathered by the Financial Entities Department (S.I.F.) of the Ministry of Finance has been discussing the main changes needed in the laws and the amendments proposed in 1991. The reports of this thinktank are, of course, very useful to understanding the main problems faced by insurance companies' staff members and by the supervisory authorities. They do not include the views of insurance agents nor of policyholders, businesses, or private individuals.

In October 1997, the Minister of Finance made the project official by creating the Insurance Law Reform Commission (*Commission de réforme des textes relatifs au secteur des assurances*): Arrêté n° 1987-MIN.FIN.ECO/SG/DGT/DOF/SIF of 27 October 1997. I was asked to join the commission during its meetings; and I suggested that rather than discussing amendments to old and ill-assorted legal texts, it would best serve the interests of all parties involved to discuss a new complete and modern insurance code, which I offered to write.

Mr. Ratomson, head of the insurance department and secretary to the Insurance Law Reform Commission worked out a calendar for the next months:

- November 1997: Abolition of the state monopoly over insurance activities.
- January-February 1998: Discussion within the commission of a draft new insurance code.
- April 1998: Discussion of a final project.
- May 1998: Presentation of the proposed code to the government.
- June 1998: Enactment of the code by the newly elected Parliament (Parliamentary elections are due to be held in April 1998).

Several meetings of the commission were held before my departure from Antananarivo to help me gather sufficient information on several specific insurance matters and on the practical treatment they are given in Madagascar. The prospective new code must be rooted in Malagasy culture and business experience, so it is necessary for the code writer to be fully acquainted with the way things are done and problems are solved in Madagascar. Annex 5 lists the topics discussed during the commission's meetings.

### ***C. Some Problems to be Faced***

Writing a new and modern insurance code adapted to a developing country such as Madagascar is a lengthy and time-consuming process, but the most difficult part of it will be to convince all interested parties of the necessity of making certain specific changes in the law. Most changes being considered for the proposed code, especially those that strengthen the rights of policyholders and give more flexibility to the investment range open to insurers, should be easily and unanimously accepted.

But I foresee at least three areas where political opposition could occur.

#### **1. Market Liberalization**

Since 1975 there have been only two composite state-owned insurers and three mutual companies with a very limited scope of operations. Liberalization could occur through the licensing of new insurance companies, which would increase competition, or through the privatization of ARO and/or Ny Havana.

Real liberalization means that new companies and privatized state-owned companies could be open to private Malagasy capital as well as to foreign capital.

The intentions of the government are not clear in this respect. There is a very old and strong tradition of state control of the economy in Madagascar. This is rooted in the centralized administration of the 18th and 19th century kingdom; reinforced by French colonial intervention in all economic matters; and continued by the socialist rhetoric and rules which prevailed from independence to the end of the

Marxist-oriented period of the Ratsiraka Government. Liberalization does not seem to be rooted in Malagasy culture. It could take time for the government to decide that:

- a. it should privatize state-owned companies;
- b. it should license other companies to create new competition;
- c. it should accept foreign insurers as shareholders of existing or new companies, or, d, as branches or agencies competing for a share of the national market.

To tell the truth, the local insurance market is small and will remain so until sustained economic growth can significantly increase investments and per capita income. It is doubtful that there is a need for many more insurers than are today already licensed.

Given the structural underwriting losses suffered by insurers, it is also doubtful that many candidates for a license would appear if the state decided to give up its monopoly and accept new competitors. It is also doubtful that private capital would be willing to buy shares in the existing state-owned companies. Banks do not seem interested in extending their business to insurance. Local private capital is scarce and does not seem interested in investing in insurance activities.

Most General Agents are eager to recover their former status as representatives of foreign insurance companies. However, most of the companies that were licensed in the country prior to nationalization either have ceased to operate through mergers or purchases or have withdrawn from African or Indian Ocean markets, and would not consider a renewal of their former operations in Madagascar. It is true that some of these companies are still active in the French Departement of La Réunion, and that their local branches might be interested in extending their operations to Madagascar where some of their clients have invested. Some insurers from Mauritius, or even South Africa, could follow some of their clients in the island.

But the question arises if it would be in the best national interest to license a few foreign insurers only to service existing foreign-owned clients, thus depriving the Malagasy-owned companies of some of their best business and increasing their underwriting losses.

The future insurance code should be as liberal as possible in matter of competition and allow for the licensing of new companies locally or foreign owned and of foreign companies. But this will not mean by itself that the practice of the government will be more liberal than it is today. Only a change of policy and culture will encourage competition and foreign involvement in the local market. This change in policy may be made easier if new applicants for a license choose to operate in areas where there is an obvious lack of insurance offer in to day's market, such as life or agricultural risks.

## **2. Motor Bodily Injuries Settlements**

The normal legal rules concerning torts and civil liability are applied to motor traffic claims. That means that victims of bodily injuries, or their parents in case of fatalities, have to prove the damage suffered, that the damage was caused by the insured's car, and that they were not themselves at fault, even slightly, on the occasion of the accident – otherwise, they would be totally or partially denied indemnity.

That also means that insurers can exclude from the cover a number of potential victims, from members of the family of the insured or driver to passengers in a private car or in a truck ("*passagers clandestins*"). In a country where road and street conditions are in such an appalling state of maintenance, it is impossible for pedestrians, including young children, and cyclists not to use the part of the streets which should be reserved to motor traffic. Any pedestrians hurt by a car can be accused of recklessness by the owner's insurer and of not staying on the pavement, thus depriving him of any right to indemnity.

Lawyers and insurance companies claims staff revel in discussions around the insured's and victims' respective shares of liability and around the quantum of the damage. The result is, from figures given by the companies, that out of ten accidents involving bodily injuries, only one is settled amicably out of court and nine have to be decided after a lengthy court battle that often lasts as long as ten to twelve years. Not only many victims do not get any damages, but those few who do get compensated have to wait many years for payment.

Courts' decisions vary wildly from one case to another, adding to the injustice of the system. Courts in the south of the country are known for very generous decisions which distort severely the underwriting results of the Motor insurance business.

The situation is shocking both for the victims of traffic accidents and for the public image of the insurance industry. Clearly there is a need to create a complete new set of legal rules for the treatment of traffic accidents, different from the rules of civil liability, as is already the case for industrial accidents or workmen's compensation.

This new legislation should make it a principle that any person who suffers bodily injury in a traffic accident should be compensated for damages, under the risk theory. Perhaps some very rare situations could remain exceptions to the principle, such as the thief hurt while driving a stolen car or the pedestrian undoubtedly determined to commit suicide by throwing himself in front of a car.

The difficulty is that an increase in the number of victims indemnified by insurers will increase the number of valid claims; and if nothing is done to limit claims, insurers would have to raise premiums to a level incompatible with the buying power of most Malagasy car owners. Premiums are already so high that many car owners drive without the compulsory insurance certificate. If premiums were to rise because of an extension of the number of victims covered, the number of uninsured cars would rise also.

The new law should not only solve the case of the victims who do not get indemnified under the current legislation, but should considerably hasten the pace of damages payments. The use of a legal disability percentage table, similar to the table used in personal accidents policies, and of a legal scale of compensation could greatly reduce uncertainties as to the amount of damages to be paid and, therefore, the need to resort to a court decision. Insurers should also be legally compelled to offer a payment within a short time after the claim has been fully documented.

Such measures should greatly accelerate claims payments and make recourse to the courts the exception rather than the rule. At the same time, they should help limit the overall cost of claims to a level compatible with the average buying power of policyholders.

Legal scales of compensation for traffic injuries are now in use in many African and Islamic countries as well as in Brazil. It has been included in the "CIMA" Insurance Code under the name of "baremisation," known to Malagasy insurance professionals and supervisory authorities. These systems have helped make motor insurance manageable for insurance companies and affordable for car owners, and have considerably reduced the injustice and fraud found under the previous law.

There is an obvious need to change Malagasy law in this regard. But such a change will hurt rooted habits of insurers who have been trained to use all existing legal technicalities to refuse to pay claimants or to pay as little and as late as possible. Lawyers and judges may resist the change because they will lose some of their authority and, sad to say, opportunities to share in the damages allowed to the victims. The most affluent part of the public, which is also the most politically influential, will find injustice in the fact that bodily injuries compensation will be scaled and therefore limited. The very rich will not be fully compensated for loss of income after a car crash. Those few privileged members of the society should be convinced to buy personal accident insurance if they find the proposed legal limits too low to fully take into account their personal circumstances.

It seems that, contrary to other countries, there are few lawyers in the Malagasy Parliament. As for judges, the person in charge of legal reform in the Ministry of Justice is already in favour of adapting some form of "baremisation" to local conditions.

### **3. Supervisory Authority**

A new law would obviously be beneficial to the insurance market and to policyholders. But its benefits will be lost if it is not fully implemented and if insurance companies and intermediaries are not duly supervised by a competent and efficient authority.

The current legislation gives enough power to the Ministry of Finance to regulate insurance activities. But this legal power is not used, as evidenced by M.A.MA.'s defiance of all government instructions.

Other aspects of insurance law are also not currently enforced, such as:

- Limits on commissions and costs deductible from Motor premiums are not observed.
- There have been no and meetings of the National Insurance Committee, nor have members been nominated.
- The Central Bureau for tarification of compulsory motor insurance, although organized under the law, has never met.

Clearly, the current staff of the Insurance Service of the Financial Entities Department of the Treasury, despite their good will, are not in a position to enforce the law and to supervise efficiently the insurance

market. Civil servants are very poorly paid, paving the way for corruption and prompting the most able to leave government service for jobs in private enterprise.

As the market is small and, even after liberalization will probably remain so for many years, insurance supervision does not need a big administration. It would only be a part-time job, for example, for one of the insurance commissioners active in developed markets such as France and the U.S. The options available for supervision may be summarized as follows :

A. The Malagasy Government could delegate supervision of its insurance companies to foreign experts who would act on a part-time, contractual basis. They would periodically check financial statements and visit company offices to perform some audit function. Any action to be taken on the basis of the supervisors findings would be taken by the Ministry of Finance. Possible foreign experts could be found with C.I.M.A. (*Conférence Internationale des Marchés d'Assurances*) in Libreville, or with the French Commission de Contrôle des Assurances. South Africa or Mauritius could be alternative sources of experts, but language facilities and legal and accounting culture plead in favour of French-speaking supervisors.

B. Banks are supervised by the *Commission de Contrôle des Banques*, which operates within the control of the Central Bank. It would be cost efficient to increase the scope of intervention of this commission to extend its powers over insurance companies and have one of its commissioners specialise in these new duties. Insurance companies and banks are quite different in their workings. Banks' problems are found in the security of their credits on the asset side of the balance sheet. Insurance companies' difficulties, on the other hand, come from the deficiency of their reserves on the liability side of the balance sheet. It seems nevertheless workable for a competent and well-trained supervisory authority to be responsible for auditing both banks and insurance companies. Such a solution is just being put to work in the United Kingdom where the F.S.A. (Finance Supervisory Authority) is in charge of supervising all financial entities: banks, insurance companies, pension funds, stock brokers, credit and finance companies, savings and loans associations, etc. It seems reasonable for Madagascar to adopt a similar reform that could be later extended to the local stock exchange, when it is created. The Central Bank has the necessary authority to take independent decisions and its staff receive better salaries than other civil servants. However interesting this idea seems, it is flatly opposed by the Ministry of Finance. Already jealous of the independence of the Central Bank, and resentful of its loss of control over the banks, this Ministry is not keen to lose one more area of authority.

C. The creation of an insurance supervisory authority, with all the costs involved, seems to be out of proportion to the needs of such a small market as Madagascar. The Government will have to make the final decision on this important and highly political matter.

**ANNEX 1 - Liste des textes législatifs et réglementaires publiés à Madagascar dans le domaine de l'Assurance**

- 1- Loi du 13 juillet 1930 relative au contrat d'Assurance (application par décret du 19 mars 1937 et promulgué par arrêté du 23 juin 1937).  
(J.O.R.M. du 3.7.37 p. 543)
- 2- Décret n° 59-59 du 30 juin 1959 relatif au contrat d'Assurance (délai de suspension des contrats pour non paiement des primes).  
(J.O.R.M. du 8.8.59 p. 1633)
- 3- Ordonnance n° 60-162 du 3 octobre 1960 instituant une obligation d'assurance en matière de circulation de véhicules terrestres à moteur.  
(J.O.R.M. du 29.10.60 p. 2287)
- 4- Ordonnance n° 62-034 du 19 septembre 1962 portant réglementation des organismes d'assurances de toute nature et des opérations d'assurances.  
(J.O.R.M. du 28.9.62 p. 1977)
- 5- Décret n° 62-667 du 27 décembre 1962 fixant la composition et les attributions du comité consultatif des Assurances.  
(J.O.R.M. du 5.1.63 p. 24)
- 6- Décret n° 62-668 du 27 décembre 1962 portant création d'un Service des Assurances à la Direction des Affaires Economiques.  
(J.O.R.M. du 5.1.63 p. 24)
- 7- Décret n° 63-031 du 16 janvier 1963 portant application de l'ordonnance n° 60-162 du 3 octobre 1960 instituant une obligation d'assurance en matière de circulation de véhicules terrestres à moteur.  
(J.O.R.M. du 26.1.63 p. 248)
- 8- Arrêté n° 289-ECO/ASS du 26 janvier 1963 relatif aux obligations incombant aux collectivités publiques, entreprises ou organismes bénéficiaires d'une dérogation à l'obligation d'assurance édictée par l'ordonnance du 3 octobre 1960.  
(J.O.R.M. du 2.3.63 p. 519)
- 9- Arrêté n° -ECO/ASS du 26 janvier 1963 relatif aux franchises prévues par les contrats d'assurances en matière de dégâts matériels causés par les véhicules terrestres à moteur.  
(J.O.R.M. du 2.3.63 p. 520)
- 10- Arrêté n° 291-ECO/ASS du 26 janvier 1963 fixant la forme des documents justificatifs d'assurance en matière de circulation de véhicules terrestres à moteur.



(J.O.R.M. du 2.3.63 p. 520)

- 11- Décret n° 63-071 du 31 janvier 1963 portant acceptation de la Convention de Coopération en matière de contrôle des entreprises et opérations d'assurances.  
(J.O.R.M. du 9.2.63 p. 358)
- 12- Décret n° 63-102 du 13 février 1963 relatif à la couverture des frais de toute nature résultant du contrôle des assurances par les contributions des organismes d'assurances.  
(J.O.R.M. du 23.2.63 p. 457)
- 13- Arrêté n° 1894-ECO/ASS du 30 juillet 1963 accordant à la Province de Majunga une dérogation à l'obligation d'assurance prévue par l'article 3 de l'ordonnance n° 60-162 du 3 octobre 1960.  
(J.R.O.M. du 3.8.63 p. 1793)
- 14- Décret n° 63-526 du 5 septembre 1963 portant application de l'ordonnance n° 62-034 du 19 septembre 1962 réglementant les organismes d'assurances de toute nature et les opérations d'assurances.  
(J.O.R.M. du 14.9.63 p. 2079)
- 15- Décret n° 63-527 du 5 septembre 1963 relatif aux placements des réserves techniques des organismes d'assurance.  
(J.O.R.M. du 14.9.63 p. 2082)
- 16- Décret n° 63-528 du 5 septembre 1963 fixant les modalités d'application de la réglementation des assurances au "LLOYD'S DE LONDRES".  
(J.O.R.M. du 14.9.63 p. 2082)
- 17- Décret n° 63-529 du 5 septembre 1963 relatif aux documents et registres à tenir par les organismes d'assurances.  
(J.O.R.M. du 14.9.63 p. 2082)
- 18- Arrêté n° 2312-ECO/ASS du 16 septembre 1963 fixant la liste des catégories d'opérations d'assurances.  
(J.O.R.M. du 21.9.63 p. 2114)
- 19- Arrêté n° 1294-ECO/ASS du 9 mai 1964 accordant une dérogation à l'obligation d'assurance à la Province de Tamatave.  
(J.O.R.M. du 23.5.64 p. 986)
- 20- Arrêté n° 1769-ECO/ASS du 2 juillet 1964 relatif à l'agrément des représentants légaux des organismes d'assurances.  
(J.O.R.M. du 11.7.64 p. 1335)

- 21- Décret n° 65-050 du 17 février 1965 relatif aux registres et documents à tenir par les organismes effectuant des opérations d'assurance maritime - transports.  
(J.O.R.M. du 27.2.65 p. 358)
- 22- Arrêté n° ...-ECO/ASS du 11 juin 1965 relatif aux contrats d'assurance maritime -transports.  
(J.O.R.M. du 19.6.65 p. 1374)
- 23- Arrêté n° 2307-ECO/ASS du 10 août 1965 complétant l'Arrêté n° 2312-ECO/ASS du 16 septembre 1963 fixant la liste des catégories d'opérations pouvant être pratiquées par les organismes d'assurances.  
(J.O.R.M. du 21.8.65 p. 1926)
- 24- Décret n° 66-050 du 26 janvier 1966 complétant le décret n° 63-527 du 5 septembre 1963 relatif au placement des réserves techniques des organismes d'assurances.  
(J.O.R.M. du 5.2.66 p. 371)
- 25- Décret n° 66-345 du 9 août 1966 complétant le décret n° 63-526 du 5 septembre 1963 qui porte application de l'Ordonnance n° 62-034 du 19 septembre 1962 réglementant les organismes d'assurances de toute nature et les opérations d'assurances.  
(J.O.R.M. du 13.8.66 p. 1828)
- 26- Arrêté n° 5157-FIN/COM/ASS du 24 décembre 1968 fixant les règles d'alimentation de la réserve de garantie.  
(J.O.R.M. du 4.1.69 p. 43)
- 27- Arrêté n° 5138-FIN/COM/ASS du 24 décembre 1968 fixant les règles d'alimentation du supplément aux réserves techniques.  
(J.O.R.M. du 4.1.69 p. 43)
- 28- Décret n° 69-189 du 27 mai 1969 modifiant le décret n° 63-527 du 5.9.63 relatif au placement des réserves techniques des organismes d'assurances.  
(J.O.R.M. du 31.5.69 p. 1206)
- 29- Décret n° 69-379 du 26 août 1969 portant ratification à la Convention de Coopération en matière de contrôle des entreprises et opérations d'assurances.  
(J.O.R.M. du 6.9.69 p. 1909)
- 30- Loi n° 71-018 du 30 juin 1971 modifiant et complétant l'article 26 de l'Ordonnance du 19 septembre 1962.  
(J.O.R.M. du 3.7.71 p. 1311)
- 31- Arrêté n° 2541-FIN/DT/ASS du 1.7.71 portant limitation des pourcentages de gestion pour les assurances relatives à des véhicules terrestres à moteur.  
(J.O.R.M. du 3.7.71 p. 1355)

- 32- Erratum à l'Arrêté n° 2541-FIN/DT/ASS du 1.7.71  
(J.O.R.M. du 18.9.71 p. 1872)
- 33- Arrêté n° 3471-FIN/DT/ASS du 15.9.71 portant limitation des commissions et rétributions de même nature allouées aux personnes habilitées à présenter des opérations d'assurances de véhicules terrestres à moteur.  
(J.O.R.M. du 18.9.71 p. 1872)
- 34- Arrêté n° 4449-FIN/DT/ASS du 23 novembre 1971 modifiant l'Arrêté n° 2312-EC/ASS du 16 septembre 1963 fixant la liste des catégories d'opérations d'assurances.  
(J.O.R.M. du 4.12.71 p. 2460)
- 35- Décret n° 72-090 du 11 avril 1972 modifiant le décret portant application de l'ordonnance n° 62-034 sur la réglementation des organismes d'assurances de toute nature et des opérations d'assurances.  
(J.O.R.M. du 22.7.72 p. 1494)
- 36- Arrêté n° 2134-MEF/DGF/3 du 5 juillet 1972 relatif aux modalités de contrôle des conditions prescrites pour la présentation des opérations d'assurances et de capitalisation.  
(J.O.R.M. du 29.7.72 p. 1595)
- 37- Arrêté n° 2135-MEF/DGF/3 du 5 juillet 1972 fixant les conditions de capacité professionnelles prescrites pour la présentation d'opérations d'assurance.  
(J.O.R.M. du 29.7.72 p. 1599)
- 38- Arrêté n° 1142-MEF/DGF/3 du 26 mars 1973 portant limitation des pourcentages de gestion pour les assurances relatives à des véhicules terrestres à moteur.  
(J.O.R.M. du 26.5.73 p. 1330)
- 39- Décret n° 73-073 du 30 mars 1973 abrogeant et remplaçant les dispositions de l'article 2 du décret n° 63-527 du 5.9.63 réglementant les placements des réserves techniques des organismes d'assurance.  
(J.O.R.M. du 28.4.73 p. 1060)
- 40- Arrêté n° 2075-MEF/DGF/3 du 7 juin 1973 portant habilitation du Comité des Sociétés d'Assurances pour viser les cartes professionnelles délivrées par l'employeur ou mandant d'une entreprise d'assurances.  
(J.O.R.M. du 16.6.73 p. 1534)
- 41- Arrêté n° 3907-MEF/DGF/3 ASS du 31 octobre 1973 portant création de la carte pour la commission d'emploi des fonctionnaires en service au Service des Assurances et habilitant ces mêmes fonctionnaires à constater les infractions en matière d'assurance.  
(J.R.O.M. du 10.11.73 p. 3127)

- 42- Arrêté n°1108-MEF/DGF/3 ASS du 2 avril 1974 portant limitation des commissions et rétributions de même nature allouées aux intermédiaires non résidents pour les opérations d'assurances de toutes branches.  
(J.O.R.M. du 13.4.74 p. 1001)
- 43- Ordonnance n° 75-002 du 16 juin 1975 attribuant à l'Etat le monopole des opérations d'assurances et de réassurances sur le territoire de la République.  
(J.O.R.M. du 21.6.75 p. 1699)
- 44- Arrêté n° 295 du 15 juillet 1975 portant nomination des membres du Comité de Coordination des Assurances.  
(J.O.R.M. du 19.7 p. 1902)
- 45- Arrêté n° 842 du 26 août 1975 fixant le rôle et les attributions du Comité de Coordination des Assurances.  
(J.O.R.M. du 30.8.75 p. 2326)
- 46- Décret n° 75-160 du 23 août 1975 fixant la condition d'opération en coassurance pour les organismes étrangers.  
(J.O.R.M. du 20.9.75 p. 2511)
- 47- Arrêté n° 4708-MFF/DGF/3/ASS du 22/12/76 modifiant les conditions de représentation des organismes d'assurances par des intermédiaires ainsi que de leur rémunération pour les opérations autres que les opérations d'assurances de véhicules terrestres à moteur.  
(J.O.R.M. du 8.01.77 p. 30)
- 48- Décret n° 82-447 du 9 décembre 1982 abrogeant et modifiant les dispositions de l'alinéa a de l'article 3, paragraphe premier du décret n° 63-527 du 5 septembre 1963 réglementant les placements des réserves techniques des organismes d'assurances.  
(J.O.R.M. du 19.02.83 p. 318)
- 49- Arrêté n° 4895/82- MAF/SG/OGF/3/ASS complétant les dispositions de l'arrêté n° 5157 du 24 décembre 1958 fixant les règles d'alimentation et le mode de fonctionnement du compte de réserve de garantie des Organismes d'Assurances.

## ***ANNEX 2 - Documents consulted***

- List of Legal texts on insurance, gathered by the Financial Entities Service (S.I.F.), Treasury Department, Ministry of Finance.
- Etude du Secteur des Assurances à Madagascar. World Bank, 1990. SOATEG, Société d'Assistance Technique et de Gestion, 9 rue Benyowski, Tsaralalana, Antananarivo.
- Madagascar, 1995 Review of the Insurance Sector, Eustasio Rodriguez, World Bank.
- Rapport Annuel 1996 du Comité des Sociétés d'Assurances, Antananarivo, Madagascar.
- Rapport Annuel de l'exercice 1996, ARO, Assurances et Réassurances Omnibranches.
- Rapport d'activités, Exercice 1995, Ny Havana Compagnie malgache d'assurances et de réassurances.
- D.C.P.E. Document Cadre de Politique Economique, 1996, listing the Government's priorities in agreement with the I.M.F.
- Les textes sur la privatisation, Campagne 1996-2000, Prime Minister's Office, Privatisation Committee.
- Banque Mondiale, Mission Résidente à Madagascar, Quarterly economic reports.
- Madagascar - un marché, 1997, Centre Français du Commerce Extérieur.
- CECAM - Caisses d'Epargne et de Crédit Agricole Mutuels. Note de situation au 30.9.1997.
- Pierre Verin, Madagascar, Karthala, 1990.
- Sennen Andriamirado, Madagascar Aujourd'hui, Jaguar, 1995.
- Politique Africaine, n° 52, Madagascar, Décembre 1993.
- Plan stratégique pour la restructuration et la redynamisation du Secteur des Assurances à Madagascar, Ministry of Finance, 1997.
- Aménagement des textes existants, Ministry of Finance, 1997.
- Projet de Canevas pour un code des assurances malgache, Ministry of Finance, 1997.
- Letter of comments on the insurance law reform by the Chairman of M.A.MA. October 14, 1997.

### ***ANNEX 3 - List of persons interviewed***

#### **- Ministry of Finance**

Mrs Vonintsalama Andriambolona, Directeur Général du Trésor  
Mrs Fara Ratovo Andriambahiny, Adviser to the Directeur Général du Trésor  
M. Rakotonirainy Jean Pascal, Directeur des Opérations Financières  
Mr Ratomson Miarinasy, Inspecteur du Trésor, Chef du Service des Assurances  
Mr Serge Rakotondravony, Insurance Department  
Mrs Chuck Mio Tine, Insurance Department  
Mr Pieter Brakel, CAER Public Finance Adviser

#### **- Ministry of Justice**

Mrs Lala Ratsiharovala, Directeur des Réformes Législatives

#### **- U.S.A.I.D.**

Mrs Karen M. Poe, General Manager, Madagascar  
Mrs Amelia Bell Knight, Coordinateur du projet FMA, Développement du Marché Financier  
Mr Fidèle Rabemananjara, CAER II Project Coordinator  
Mrs Mary Norris, Project Coordinator  
Mr François Vezina, Coordinateur Réforme Juridique et Judiciaire

#### **- World Bank**

Mr Dieudonné Randriamananpisoa, Chargé des Opérations, Mission Résidente de la Banque Mondiale

#### **- Comité des Sociétés d'Assurances**

Mr Rakotoson Andriambala, Délégué Général

#### **- A.R.O.**

Mr Jean-Baptiste Guerra, General Manager  
Mrs Lala M. Rabetritonta, Manager  
Mrs Francine Ratovonar, Directeur des Etudes  
Mr Zoë Razanamahery  
Mr Vohangy Rabodoniriny, Motor Claims Departement  
Mr Norbert Randrianasolo, Chef du Service des sinistres contentieux

- Ny Havana

Mr Roland Rasamoely, General Manager  
Mr Ralaialitiana Andrianarisoa, Deputy General Manager  
Miss Thanta Randriamandranto, Chargée de mission  
Mr Vololona Andrianjatovo, Claims manager  
Mr Justin Randrianaivoarijoana, Investments Manager  
Mrs Nicole Rakotomanga, Département des Etudes Techniques

- M.A.M.A.

Mr Frederic Rabarison, Chairman of the Board  
Mr Richard Ramandraibe, Underwriting and Sales Manager  
Mr Henri Razafindrakoto, Adviser to the Board

- General Agents

Mr Ratsimbazafy Solo, Union  
Mr Andrianjaka Ravelonahina, Société Malgache d'Assurances, Chairman of General Agents' Union  
Mr Camille Albertini, H. de Brugada & Fils  
Mr J.P. Loÿe, R. Duponsel et Cie  
Bruno Rabary, Mayer & Cie (Former Manager of Ny Havana)

- Miscellaneous

Maître Gérard P. Ramangaharivony, Lawyer  
Maître Edouard Rabarijohn, Lawyer, former General Manager of Ny Havana  
Mr Henri Rajerison, Consultant, former General Manager of A.R.O.  
Mr Georges Ramanoara, General Manager, C.E.C.R.  
Mr Rajakajara Randrianasolo, Manager, Kraoma  
Mr Michel Hermitte, Chef du service l'Expansion Economique French Embassy  
Robert Buronfosse, Fondé de Pouvoir, Groupama  
Hervé Lejeune, Chargé de Mission, Groupama  
Jean-Hervé Fraslin, FERT  
Jean-Louis Pierard, Crédit Agricole du Nord Est